

# GRAY

TELEVISION, INC.

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**Robert A. Beizer**  
VP - Law & Development

May 29, 2003

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Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Notice of Permitted *Ex Parte* Presentation, 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules, MB Docket No. 02-277**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, I hereby submit this notice of a permitted ex parte presentation in the above-referenced proceeding.

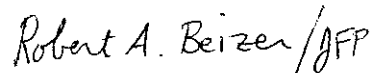
On May 28, 2003, the undersigned, accompanied by Richard E. Wiley and James R. Bayes of Wiley Rein & Fielding LLP, met with Commissioner Kathleen Q. Abernathy and her Legal Advisor, Stacy Robinson. We discussed why the need for regulatory relief from local television ownership restrictions is most acute in mid-sized and smaller markets, as set forth in the attached talking points (Attachment A), and expressed views consistent with those detailed in the Comments and Reply Comments filed by Gray Television, Inc. ("Gray") in this docket.

Gray's position with respect to the need for regulatory relief in mid-sized and smaller markets is strongly supported by the data submitted into the record in this proceeding by numerous other parties in the broadcasting industry and the financial community. For example, we understand that Bear Stearns' Victor B. Miller, IV today is submitting a report that confirms that a six-station minimum or Top-Four restriction would deny effective duopoly relief to many markets in the 51-150 range. Mr. Miller's report also demonstrates that, on average, the fourth-ranked TV station has an audience share trailing the third-ranked TV station by 33.9 percent. Similarly, Mr. Miller determines that, on average, the fourth-ranked station's revenue share trailed the third-ranked station's by 25.7 percent.

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In short, in mid-sized and smaller markets, stations within the Top Four can vary greatly in terms of ratings and financial strength, and many such stations would benefit greatly from further relief from duopoly restrictions. Finally, Gray submits that, regardless of the precise parameters of any new local television ownership rule that may be adopted, the Commission should consider other proposed combinations on a case-by-case basis and/or under a waiver standard that is based on factors including, but not limited to, those identified in Attachment B hereto.

Respectfully submitted,

Handwritten signature of Robert A. Beizer in black ink, followed by a forward slash and the letters 'JFP'.

Robert A. Beizer

#### Attachments

cc: Commissioner Abernathy  
Stacy Robinson  
Paul Gallant  
Linda Senecal (via hand delivery and email)  
Mania Baghdadi (via hand delivery and email)

## THE NEED FOR RELIEF FROM LOCAL TELEVISION OWNERSHIP RESTRICTIONS IN MOST ACUTE IN MID-SIZED AND SMALLER MARKETS

- Gray Television, Inc. (“Gray”), the nation’s largest owner/operator of television stations in mid-sized and smaller markets, is well aware of the increasing financial pressures over-the-air broadcasters face and the critical need to achieve operating efficiencies in order to remain viable competitors. Those pressures have only increased in the years since the last modification of the local TV ownership rule.
- Gray believes that it is critically important that the Commission relax restrictions on local television station ownership to a sufficient degree to permit meaningful relief in mid-sized and smaller markets. In particular, while a six-station minimum or “Top Four” restriction reported to be under consideration may make sense in some larger markets, it would gut regulatory relief in mid-sized and smaller markets, where profit margins are much lower and the need for regulatory stimulus far greater. In fact, the NAB and others have submitted detailed evidence showing that mid-sized and smaller market stations are far less profitable than large market stations, and that profitability has declined significantly in recent years.
- The Top Four component of the current duopoly rule was premised in large part on the assumption that it would preserve separate local newscasts. Although local news historically has been a profit center for broadcasters, viewership and ad revenues have declined dramatically in the face of increasing competition for cable and satellite services and other new competitors. These financial pressures in turn lead to cuts in staffing, greater reliance on syndicated features and other non-local services, and, in some cases, to the loss of local news programming altogether.
- *In 14 of the 24 markets in which Gray operates, at least one of the top-four-rated stations does not produce its own regularly scheduled local newscast. And in at least 51 out of 107 markets we examined with 4 to 8 stations, at least one of the top-four-rated commercial TV stations is not doing its own local news. (That number may in fact be higher, as some stations obtain their local newscasts from a competitor.) Overall, according to information provided by Robert Papper,<sup>1</sup> more than half of all markets – 120 out of 210 – have fewer than four independent local newscasts. Maintenance of a Top Four restriction will only serve to ensure that this remains the case.*
- Combinations involving one of the three leading stations and the fourth would yield significant benefits in terms of new or enhanced local news and other public interest programming services. If permitted under a “Five Stations, No Top Three Combinations” standard, for example, these additional ownership combinations would have no appreciable adverse impact on diversity and would enhance local service. Moreover, this standard would represent a meaningful departure from the Eight Voices, Top Four limit vacated by the Court of Appeals.

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<sup>1</sup> Robert Papper is Professor of Telecommunications at Ball State University and Director of the RTNDA/Ball State University Annual Survey of Radio and Television News.

## **ATTACHMENT A (Cont.)**

- Approximately 18 additional markets would be able to enjoy the benefits of duopoly operations, but all would still have at least four separately owned TV stations (including, in some cases, noncommercial voices). More importantly, broadcasters would be free to pursue duopoly combinations that would strengthen station viability, engender support and interest from the financial community, and foster enhanced local news service.

## GRAY COMMUNICATIONS MARKET CHART

MARKET NAME	RANK	NUMBER OF COMMERCIAL STATIONS	NUMBER OF NON- COMMERCIAL STATIONS	TOTAL NUMBER OF STATIONS	TOP FOUR STATION(S) W/O NEWS*
Knoxville, TN	62	7	2	9	
Wichita-Hutchinson, KS	65	10	3	13	
Lexington, KY	66	7	4	11	WDKY-TV (Fox)
Omaha, NE	75	5	3	8	
Madison, WI	85	5	1	6	
Colorado Springs, CO	91	4	1	5	KXRM-TV (Fox)
Waco-Temple-Bryan, TX	94	5	3	8	KWKT (Fox)
Lincoln-Hastings Kearney, NE	102	6	4	10	
Greenville-New Bern- Washington, NC	106	7	3	10	WFXI (Fox)
Reno, NV	110	7	1	8	KRXI (Fox)
Lansing, MI	111	5	1	6	WLAJ (ABC)
Tallahassee, FL	113	5	1	6	WTLH (Fox); WTWC-TV (NBC)
Augusta, GA	114	4	2	6	WFXG (Fox)
La Crosse-Eau Claire, WI	127	6	1	7	WLAX (Fox)
Rockford, IL	132	4	0	4	WQRF-TV (Fox)
Wausau-Rhineland, WI	137	6	2	8	
Topeka, KS	138	3	1	4	KTCA-TV (ABC)
Panama City, FL	159	5	1	6	WPGX (Fox)
Sherman, TX-Ada, OK	160	2	0	2	
Dothan, AL	172	3	0	3	WDFX (Fox)
Harrisonburg, VA	178	1	1	2	
Bowling Green, KY	181	2	2	4	
Meridian, MS	185	3	1	4	WGBC (NBC)
Parkersburg, WV	186	1	0	1	

Sources: Broadcasting and Cable Yearbook 2002-2003; Gray internal sources.

Note: The totals indicated above do not include satellite stations.

\* The stations listed do not produce and broadcast their own regularly scheduled full-length local newscasts.

**Factors Warranting Favorable Consideration on a Case-by-Case or Waiver Basis**

1. Financial difficulties of one or both stations (not limited to “failing” status or lack of out-of-market buyers).
2. Geographic separation of communities of license, “economic” markets of stations involved.
3. Significant disparity in ratings or revenues, absence of ratings dominance or market power.
4. Significant benefits in DTV transition for one or both stations.
5. Establishment/maintenance of local news operations.
6. Devotion of significant additional resources/expertise to local news and informational programming.
7. Specific news-related or other public service initiatives.
8. Buyer’s history of local involvement, broadcasting experience, etc.
9. Unusual efficiencies/synergies resulting from the proposed combination.
10. History of common ownership (combinations should be grandfathered and transferable).